

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FRANCISCO VACA,

Plaintiff,

Case No: 1:08-cv-653

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

Pursuant to 42 U.S.C. § 405(g), plaintiff seeks judicial review of a decision of the Commissioner of the Social Security Administration denying his claim for Disability Insurance Benefits (DIB) under Title II of the Social Security Act. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation recommending that this Court reverse the Commissioner's decision and remand the matter for further factual findings. The matter is presently before the Court on the Commissioner's objection to the Report and Recommendation. Plaintiff did not file any response to the objection. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order.

The ALJ determined that plaintiff suffered from bipolar disorder; however, because the ALJ also determined that plaintiff retained the ability to perform his past relevant work as a stocker and utility worker, the ALJ concluded that plaintiff was not disabled as defined by the Act. The Magistrate Judge found that the ALJ failed to sufficiently develop the factual record, pointing out several relevant facts that had not been probed at the administrative hearing, where plaintiff was unrepresented by counsel.

In objecting to the Report and Recommendation, the Commissioner does not disagree with the Standard of Review set forth by the Magistrate Judge, only the Magistrate Judge's determination that the standard was not met. The Commissioner objects to the Magistrate Judge's characterization of the ALJ's evidence development at the hearing as "perfunctory" and "cursory," opining that the characterization fails to take into account all that the ALJ did elicit and consider, such as the testimony from plaintiff and his mother, the reports of the treating psychologist and the state agency psychiatrist, and plaintiff's vocational history.

Having considered the Commissioner's argument and upon review of the record, the Court agrees with the Magistrate Judge's determination that the ALJ did not fully develop the record evidence, thus depriving plaintiff of a full and fair hearing. The Magistrate Judge properly concluded that the deficiencies in the record require a remand for further factual findings pursuant to 42 U.S.C. § 405(g) (sentence four).

Accordingly:

IT IS HEREBY ORDERED that the objection (Dkt 17) is DENIED and the Report and Recommendation of the Magistrate Judge (Dkt 16) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is REVERSED and REMANDED for further factual findings.

A Judgment will be entered consistent with this Opinion and Order.

Dated: March 4, 2010

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge